

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TERRANCE JOE QUINLAN,

Petitioner,

v.

ROBERT FERGUSON,

Respondent.

CASE NO. 2:22-cv-01709-JCC-GJL

REPORT AND RECOMMENDATION

Noting Date: August 26, 2024

The District Court has referred this federal habeas action filed pursuant to 28 U.S.C. § 2254 to United States Magistrate Judge Grady J. Leupold. Petitioner Terrance Joe Quinlan, proceeding *pro se*, filed a federal habeas Petition seeking relief from a state court conviction. Dkt. 11. Presently before the Court is Petitioner's Motion to Withdraw his habeas Petition. Dkt. 29. Respondent does not oppose the Motion. *See* Dkt. 30. After review of the record, the Court recommends the Motion to Withdraw (Dkt. 29) be **GRANTED** and this case be **DISMISSED without prejudice** pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

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I. BACKGROUND

Petitioner initiated this case on November 22, 2022.¹ Dkt. 1. On December 8, 2022, the Court entered an Order directing service of the habeas Petition, but also directing Respondent to address only the question of whether Petitioner has exhausted his state court remedies as required for a § 2254 petition. Dkt. 12. On December 14, 2022, Respondent filed an Answer to the Petition only as to the issue of exhaustion. Dkt. 15. On January 11, 2023, the Court issued an Order staying the case to permit Petitioner to return to state court to exhaust his state court remedies. Dkt. 16. Since that time, the parties have submitted status reports concerning the procedural posture of Petitioner's proceedings in state court. *See* Dkts. 18, 22–25, 27, 28. On July 5, 2024, Petitioner filed the instant Motion. Dkt. 29. In a Response filed July 8, 2024, Respondent indicated they do not oppose the Motion. Dkt. 30.

II. DISCUSSION

Federal Rule of Civil Procedure 41 sets forth the circumstances under which an action may be dismissed. Courts have held Rule 41 applies to § 2254 cases. *See Orozco v. California Dep't of Corr.*, No. CV 17-9012-AB(PLA), 2017 WL 6626637, at *4 (C.D. Cal. Dec. 28, 2017) (applying Rule 41 to a § 2254 action); *Williams v. Clarke*, 82 F.3d 270, 273 (8th Cir. 1996) (“a Rule 41(a)(1) voluntary dismissal is both appropriate and consistent with the rules governing habeas cases”).

Under Rule 41(a)(1), an action may be voluntarily dismissed without prejudice by the petitioner if the petitioner files a notice of dismissal before the respondent files an answer or summary judgment motion and the petitioner has not previously dismissed an action “based on

¹ Petitioner initially filed his habeas Petition in the United States District Court for the Eastern District of Washington. *See* Dkt. 1. On December 1, 2022, the Eastern District transferred the case to this Court. Dkt. 3.

1 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
2 *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of
3 those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda*
4 *v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time
5 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on August
6 26, 2024, as noted in the caption.

7 Dated this 12th day of August, 2024.

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9 A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid black horizontal line.

10 Grady J. Leupold
11 United States Magistrate Judge
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